

## **Assembly Bill No. 1425**

### **CHAPTER 414**

An act to amend Sections 481, 10113.2, and 11629.79 of, to repeal Section 1758.994 of, and to repeal and add Section 10113.35 of, the Insurance Code, relating to insurance.

[Approved by Governor October 2, 2011. Filed with  
Secretary of State October 2, 2011.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1425, Committee on Insurance. Insurance.

(1) Existing law requires the Insurance Commissioner to report to the Legislature by June 30, 2004, regarding the effectiveness of specified provisions regulating credit insurance agents in protecting consumers involved in credit insurance transactions.

This bill would repeal this reporting requirement provision.

(2) Existing law governs the regulation of life settlements, as defined, by the Insurance Commissioner. Existing law prohibits a person from entering into, brokering, or soliciting life settlements unless that person holds a license, issued by the commissioner, to so act. Existing law authorizes the commissioner to adopt rules and regulations reasonably necessary to govern life settlement transactions and to adopt rules and regulations under those provisions as emergency regulations.

This bill would revise and recast the provisions governing the rulemaking authority of the commissioner and would instead authorize the commissioner to adopt rules and regulations reasonably necessary to implement specified provisions governing life settlements, as specified.

(3) Existing law establishes a low-cost automobile insurance program. Existing law, subject to exceptions, requires that the Office of Administrative Law review administrative regulations proposed by state agencies prior to their adoption. Exceptions to this requirement authorized the Insurance Commissioner to adopt emergency regulations relating to the low-cost automobile insurance program as it commenced in 2000, and as it was expanded in 2006, that are not subject to the review process of the Office of Administrative Law.

This bill would repeal the language that authorized the commissioner to adopt emergency regulations in relation to the low-cost automobile insurance program.

(4) Existing law requires any insurance policy that includes a provision to refund premium other than on a pro rata basis, including the assessment of cancellation fees, to disclose that fact in writing, including the actual or maximum fees or penalties to be applied, which may be stated in the form of percentages of the premium. The disclosure is required to be provided

prior to, or concurrent with, the application and prior to each renewal to which the policy provision applies.

This bill would authorize a workers' compensation insurer to provide the disclosure with the quote offering insurance to the consumer prior to the consumer accepting the quote in lieu of disclosure prior to or concurrent with the application.

*The people of the State of California do enact as follows:*

SECTION 1. Section 481 of the Insurance Code is amended to read:

481. (a) Unless the insurance contract otherwise provides, a person insured is entitled to a return of his or her premium if the policy is canceled, rejected, surrendered, or rescinded, as follows:

(1) To the whole premium, if the insurer has not been exposed to any risk of loss.

(2) Where the insurance is made for a definite period of time and the insured surrenders his or her policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued. The provisions of Section 482 apply only to the expired time.

(b) No contract for individual motor vehicle liability or homeowners' multiple-peril insurance may contain a provision which mandates that the premium for the policy shall be fully earned upon the happening of any contingency except the expiration of the policy itself. This subdivision shall not apply to policy fees or membership fees.

(c) (1) Any insurance policy that includes a provision to refund premium other than on a pro rata basis, including the assessment of cancellation fees, shall disclose that fact in writing, including the actual or maximum fees or penalties to be applied, which may be stated in the form of percentages of the premium. The disclosure shall be provided prior to, or concurrent with, the application and prior to each renewal to which the policy provision applies. For purposes of this subdivision, an insurer offering workers' compensation insurance, as defined in Section 109, may provide the disclosure with the quote offering insurance to the consumer prior to the consumer accepting the quote in lieu of disclosure prior to or concurrent with the application. Disclosure shall not be required if the policy provision permits, but does not require, the insurer to refund premium other than on a pro rata basis, and the insurer refunds premium on a pro rata basis.

(2) If an application is made by telephone, the disclosure shall be mailed to the applicant or insured within five business days.

(3) The disclosure may be made electronically pursuant to Section 38.5 in lieu of being mailed.

(4) This section does not apply to cancellations that are calculated subject to paragraph (2) of subdivision (g) of Section 673.

(d) This section shall not apply to policies of ocean marine insurance. For purposes of this section, "ocean marine insurance" means insurance of

vessels or crafts, their cargos, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance governed by the provisions of Chapter 1 (commencing with Section 1880) of Part 1 of Division 2, and as distinguished from inland marine insurance policies.

(e) The disclosure requirements of subdivision (c) shall be prospective and shall apply only to policies issued or renewed on or after January 1, 2012.

(f) Nothing in this section shall require any additional disclosure of a fee or penalty for early cancellation if that disclosure is required by any other provision of law.

SEC. 2. Section 1758.994 of the Insurance Code is repealed.

SEC. 3. Section 10113.2 of the Insurance Code is amended to read:

10113.2. (a) This section applies to any person entering into, brokering, or soliciting life settlements pursuant to this section and Sections 10113.1 and 10113.3.

(b) (1) Except as provided in subparagraph (B) or (D), no person may enter into, broker, or solicit life settlements pursuant to Section 10113.1 unless that person has been licensed by the commissioner under this section. The person shall file an application for a license in the form prescribed by the commissioner, and the application shall be accompanied by a fee established by the commissioner. The license fees for a provider license shall be reasonable and sufficient to cover the costs incurred by the department to implement this act. The license and renewal fees for a broker shall be reasonable and sufficient to cover the costs incurred by the department to implement this act and shall not exceed the license and renewal fees established for an insurance producer who is acting as a life settlement broker. The applicant shall provide any information the commissioner may require. The commissioner may issue a license, or deny the application if, in his or her discretion, it is determined that it is contrary to the interests of the public to issue a license to the applicant. The reasons for a denial shall be set forth in writing.

(A) An individual acting as a broker under this section shall complete at least 15 hours of continuing education related to life settlements and life settlement transactions, as required and approved by the commissioner, prior to operating as a broker. This requirement shall not apply to a life insurance producer who qualifies under subparagraph (D).

(B) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, and whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate a life settlement contract on behalf of the owner without having to obtain a license as a broker.

(C) A person licensed to act as a viatical settlement broker or provider as of December 31, 2009, shall be deemed qualified for licensure as a life settlement broker or provider, and shall be subject to all the provisions of this article as if the person were originally licensed as a life settlement broker or provider.

(D) (i) A life insurance producer who has been duly licensed as a life agent for at least one year or as a licensed nonresident producer in this state for one year shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a broker.

(ii) Not later than 10 days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that he or she is acting as a broker, on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner.

(iii) The fee established by the commissioner shall be reasonable and sufficient to cover the costs incurred by the department to implement this act, but shall not be in excess of the license and renewal fees paid by a life insurance producer. The fee shall be paid by the life insurance producer for each license term the producer intends to operate as a broker. The fee shall be calculated pursuant to Section 1750. The notification to the commissioner shall include an acknowledgment by the life insurance producer that he or she will operate as a broker in accordance with this act.

(iv) The insurer that issued the policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker or provider arising out of, or in connection with, the life settlement transaction, unless the insurer receives compensation for the replacement of the life settlement contract for the provider or broker.

(E) The commissioner shall review the examination for the licensing of life insurance agents and may recommend any changes to the examination to the department's curriculum committee in order to carry out the purposes of this section and Sections 10113.1 and 10113.3.

(2) Whenever it appears to the commissioner that it is contrary to the interests of the public for a person licensed pursuant to this section to continue to transact life settlements business, he or she shall issue a notice to the licensee stating the reasons therefor. If, after a hearing, the commissioner concludes that it is contrary to the interests of the public for the licensee to continue to transact life settlements business, he or she may revoke the person's license, or issue an order suspending the license for a period as determined by the commissioner. Any hearing conducted pursuant to this paragraph shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearing may be conducted by administrative law judges chosen pursuant to Section 11502 or appointed by the commissioner, and the commissioner shall have the powers granted therein.

(3) Each licensee shall owe and pay in advance to the commissioner an annual renewal fee in an amount to be determined by the commissioner pursuant to paragraph (1) of subdivision (b). This fee shall be for each license year, as defined by Section 1629.

(4) Any licensee that intends to discontinue transacting life settlements in this state shall so notify the commissioner, and shall surrender its license.

(c) A life settlements licensee shall file with the department a copy of all life settlement forms used in this state. No licensee may use any life settlement form in this state unless it has been provided in advance to the

commissioner. The commissioner may disapprove a life settlement form if, in his or her discretion, the form, or provisions contained therein, are contrary to the interests of the public, or otherwise misleading or unfair to the consumer. In the case of disapproval, the licensee may, within 15 days of notice of the disapproval, request a hearing before the commissioner or his or her designee, and the hearing shall be held within 30 days of the request.

(d) Life settlements licensees shall be required to provide any applicant for a life settlement contract, at the time of application for the life settlement contract, all of the following disclosures in writing and signed by the owner, in at least 12-point type:

(1) That there are possible alternatives to life settlements, including, but not limited to, accelerated benefits options that may be offered by the life insurer.

(2) The fact that some or all of the proceeds of a life settlement may be taxable and that assistance should be sought from a professional tax adviser.

(3) Consequences for interruption of public assistance as provided by information provided by the State Department of Health Care Services and the State Department of Social Services under Section 11022 of the Welfare and Institutions Code.

(4) That the proceeds from a life settlement could be subject to the claims of creditors.

(5) That entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate of a group policy to be forfeited by the owner and that assistance should be sought from a professional financial adviser.

(6) That a change in ownership of the settled policy could limit the insured's ability to purchase insurance in the future on the insured's life because there is a limit to how much coverage insurers will issue on one life.

(7) That the owner has a right to rescind a life settlement contract within 30 days of the date it is executed by all parties and the owner has received all required disclosures, or 15 days from receipt by the owner of the proceeds of the settlement, whichever is sooner. Rescission, if exercised by the owner, is effective only if both notice of rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(8) That proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or the interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract.

(9) The date by which the funds will be available to the owner and the transmitter of the funds.

(10) The disclosure document shall include the following language:

“All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured’s identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.”

(11) That the insured may be contacted by either the provider or the broker or its authorized representative for the purpose of determining the insured’s health status or to verify the insured’s address. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(12) Any affiliations or contractual relations between the provider and the broker, and the affiliation, if any, between the provider and the issuer of the policy to be settled.

(13) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner’s instructions and in the best interest of the owner.

(14) The name, business address, and telephone number of the broker.

(e) Prior to the execution of the life settlement contract by all parties, the life settlement provider entering into a life settlement contract with the owner shall provide, in a document signed by the owner, the gross purchase price the life settlement provider is paying for the policy, the amount of the purchase price to be paid to the owner, the amount of the purchase price to be paid to the owner’s life settlement broker, and the name, business address, and telephone number of the life settlement broker. For purposes of this section, “gross purchase price” means the total amount or value paid by the provider for the purchase of one or more life insurance policies, including commissions and fees.

(f) The broker shall provide the owner and the insured with at least all of the following disclosures in writing prior to the signing of the life settlement contract by all parties. The disclosures shall be clearly displayed in the life settlement contract or in a separate document signed by the owner:

(1) The name, business address, and telephone number of the broker.

(2) A full, complete, and accurate description of all of the offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract.

(3) A disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract.

(4) All estimates of the life expectancy of the insured which are obtained by the licensee in connection with the life settlement, unless such disclosure would violate any California or federal privacy laws.

(5) The commissioner may consider any failure to provide the disclosures or rights described in this section as a basis for suspending or revoking a broker's or provider's license pursuant to paragraph (2) of subdivision (b).

(g) All medical information solicited or obtained by any person soliciting or entering into a life settlement is subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1, concerning confidentiality of medical information.

(h) Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance producer, information bureau, rating agency, or company, or any other person with actual knowledge of an insured's identity shall not disclose the identity of an insured or information that there is a reasonable basis to believe that could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure is one of the following:

(1) It is necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure.

(2) It is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, provided the sale is conducted in accordance with applicable state and federal securities law and provided further that the owner and the insured have both provided prior written consent to the disclosure.

(3) It is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or any other provision of law.

(4) It is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1.

(5) It is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status. For the purposes of this section, the term "authorized representative" shall not include any person who has or may have any financial interest in the settlement contract other than a provider, licensed broker; further, a provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this act.

(6) It is required to purchase stop loss coverage.

(i) In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(1) If the premium finance loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated

with obtaining and maintaining the life insurance policy and loan, the application may be rejected as a prohibited practice under this act.

(2) If the financing does not violate paragraph (1), the existence of premium financing may not be the sole criterion employed by an insurer in a decision whether to reject an application for life insurance. The insurance carrier may make disclosures to the applicant, either on the application or an amendment to the application to be completed no later than the delivery of the policy, including, but not limited to, the following:

“If you have entered into a loan arrangement where the policy is used as collateral, and the policy changes ownership at some point in the future in satisfaction of the loan, the following may be true:

“(A) A change of ownership could lead to a stranger owning an interest in the insured’s life.

“(B) A change of ownership could in the future limit your ability to purchase insurance on the insured’s life because there is a limit to how much coverage insurers will issue on a life.

“(C) You should consult a professional adviser since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.”

(3) In addition to the disclosures in paragraph (2), the insurance carrier may require the following certifications from the applicant or the insured:

“(A) I have not entered into any agreement or arrangement under which I have agreed to make a future sale of this life insurance policy.

“(B) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy.

“(C) The borrower has an insurable interest in the insured.”

(j) Life insurers shall provide individual life insurance policyholders with a statement informing them that if they are considering making changes in the status of their policy, they should consult with a licensed insurance or financial advisor. The statement may accompany or be included in notices or mailings otherwise provided to the policyholders.

(k) The commissioner may, whenever he or she deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner shall have the authority to order any licensee or applicant to produce any records, books, files, or other information as is reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(l) The commissioner may investigate the conduct of any licensee, its officers, employees, agents, or any other person involved in the business of the licensee, or any applicant for a license, whenever the commissioner has reason to believe that the licensee or applicant for a license may have acted, or may be acting, in violation of the law, or otherwise contrary to the interests of the public. The commissioner may initiate an investigation on his or her own, or upon a complaint filed by any other person.

(m) The commissioner may issue orders to licensees whenever he or she determines that it is reasonably necessary to ensure or obtain compliance with this section, or Section 10113.3. This authority includes, but is not limited to, orders directing a licensee to cease and desist in any practice that is in violation of this section, or Section 10113.3, or otherwise contrary to the interests of the public. Any licensee to which an order pursuant to this subdivision is issued may, within 15 days of receipt of that order, request a hearing at which the licensee may challenge the order.

(n) The commissioner may, after notice and a hearing at which it is determined that a licensee has violated this section or Section 10113.3 or any order issued pursuant to this section, order the licensee to pay a monetary penalty of up to ten thousand dollars (\$10,000), which may be recovered in a civil action. Any hearing conducted pursuant to this subdivision shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearing may be conducted by administrative law judges chosen pursuant to Section 11502 or appointed by the commissioner, and the commissioner shall have the powers granted therein.

(o) Each licensed provider shall file with the commissioner on or before March 1 of each year an annual statement in the form prescribed by the commissioner. The information that the commissioner may require in the annual statement shall include, but not be limited to, the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement shall also include the names of the insurance companies whose policies have been settled and the brokers that have settled those policies, and that information shall be received in confidence within the meaning of subdivision (d) of Section 6254 of the Government Code and exempt from disclosure pursuant to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The annual statement shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

(p) No person who is not a resident of California may receive or maintain a license unless a written designation of an agent for service of process is filed and maintained with the commissioner. The provisions of Article 3 (commencing with Section 1600) of Chapter 4 of Part 2 shall apply to life settlements licensees as if they were foreign insurers, their license a certificate of authority, and the life settlements a policy, and the

commissioner may modify the agreement set forth in Section 1604 accordingly.

(q) No person licensed pursuant to this section shall engage in any false or misleading advertising, solicitation, or practice. In no case shall a broker or provider, directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a new policy for the sole purpose of or with a primary emphasis on settling the policy or use the words “free,” “no cost,” or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy. The provisions of Article 6 (commencing with Section 780) and Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 shall apply to life settlements licensees as if they were insurers, their license a certificate of authority or producer’s license, and the life settlements a policy, and the commissioner shall liberally construe these provisions so as to protect the interests of the public.

(r) Any person who enters into a life settlement with a life settlements licensee shall have the absolute right to rescind the settlement within 30 days of the date it is executed by all parties and the owner has received all required disclosures, or 15 days from receipt by the owner of the proceeds of the settlement, whichever is sooner, and any waiver or settlement language contrary to this subdivision shall be void. Rescission, if exercised by the owner, is effective only if both notice of rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner’s estate of all proceeds and any premiums, loans, and loan interest to the provider.

(s) Records of all consummated transactions and life settlement contracts shall be maintained by the provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours.

(t) A violation of this section is a misdemeanor.

SEC. 4. Section 10113.35 of the Insurance Code is repealed.

SEC. 5. Section 10113.35 is added to the Insurance Code, to read:

10113.35. (a) The commissioner may adopt rules and regulations reasonably necessary to implement the provisions of this act.

(b) This section shall be prospective only, and nothing in the act adding this section shall be interpreted to interfere with or overrule regulations adopted prior to the effective date of this act by the Insurance Commissioner pursuant to the authority granted at the time those regulations were adopted.

SEC. 6. Section 11629.79 of the Insurance Code is amended to read:

11629.79. (a) The program for the County of Los Angeles and the City and County of San Francisco is authorized to commence operations on January 1, 2000, but shall be fully operational no later than July 1, 2000.

(b) To this end, the commissioner, in consultation with the California Automobile Assigned Risk Plan, shall adopt regulations to implement the provisions of this article within 60 days of its effective date.

(c) The program for the Counties of Alameda, Fresno, Orange, Riverside, San Bernardino, and San Diego shall commence operations on April 1, 2006, and shall be made operational in all other counties of California according to the discretion of the commissioner. The commissioner, in consultation with the California Automobile Assigned Risk Plan, shall adopt regulations to implement the expansion of the program to these counties.

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